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WORK PROGRAMME, INCLUDING TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON COMPETITION LAW AND POLICY

Note by the UNCTAD secretariat

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I. INTRODUCTION

1. The present note, prepared by the UNCTAD secretariat, attempts to respond to the requests made by the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in the resolution it adopted on 21 November 1995. 1/ The work reviewed in this note is also in line with UNCTAD's role as defined in the Partnership for Growth and Development 2/ of "examining issues related to competition law of particular relevance to development: continuing analytical work on restrictive business practices; assisting these countries to formulate competition policies and legislation; institution-building; focusing on Africa by holding a regional meeting, creating relevant inventories and databases, and establishing a technical cooperation programme". In particular, the Third Review Conference requested the secretariat "to revise documents TD/RBP/CONF.4/2, TD/RBP/CONF.4/6, TD/RBP/CONF.4/7, TD/RBP/CONF.4/8, TD/B/RBP/81/Rev.4 and UNCTAD/ITD/15 in the light of comments by member States made at the Conference or to be sent in writing by 31 January 1996". A revised version of document TD/RBP/CONF.4/8 is submitted to the Expert Meeting under item 3 of its provisional agenda. As indicated in the provisional agenda and annotations for the Expert Meeting, because documentation is limited to two documents per meeting, it has not been possible for the secretariat to publish revised versions of all the documents in question for the Meeting. Rather, in order to facilitate discussion on these documents, part I of this note contains extracts of the comments received from member States on the relevant documents. Revised versions of these documents will be published in due course, in the light of the Meeting's discussions.

2. In paragraph 8 of the resolution adopted by the Third Review Conference, the UNCTAD secretariat was requested to prepare a "draft outline of a possible study on empirical evidence of the benefits (including benefits for consumers) to be gained by developing and least developed countries and countries in transition from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development". Accordingly, part II of this note contains a draft outline of that study.

3. Finally, the Third Review Conference also requested the UNCTAD secretariat, "taking into account increased needs for technical cooperation and technical assistance in developing countries, countries in transition and other countries, to carry out a review of technical cooperation activities undertaken by UNCTAD and other international organizations, as well as States bilaterally, with a view to strengthening its ability to provide technical assistance for capacity-building in the area of competition law and policy by:

(a) Encouraging providers and recipients of technical cooperation to take into account the results of the substantive work done by UNCTAD in the above-mentioned areas in determining the focus of their cooperation activities;

(b) Encouraging developing countries and countries in transition to identify specific competition law and policy areas and issues which they would wish to see receive priority attention in the implementation of technical cooperation activities,

(c) Identifying common problems encountered in the competition law and policy area which might receive attention in regional and subregional seminars;

(d) Enhancing cost-effectiveness, complementarity and collaboration among providers and recipients of technical cooperation, both in terms of the geographical focus of technical cooperation activities, taking into account the special needs of African countries, and the nature of cooperation undertaken;

(e) Preparation and execution of national, regional and subregional projects on technical cooperation and training in the field of competition law and policy, taking special account of those countries, or subregions which have not received such assistance so far, especially in the field of law drafting and staff training, and enforcement capacity;

(f) Mobilizing resources and widening the search for potential donors for UNCTAD technical cooperation in this area;

and to prepare a report thereon" (para. 4 of the Conference resolution).

4. Accordingly, part III of this note contains a progress report on the review, as well as extracts of replies by States to note TD 420/8(5) of the Secretary-General of UNCTAD dated 8 March 1996.

II. COMMENTS RECEIVED BY THE SECRETARIAT ON DOCUMENTS SUBMITTED TO THE THIRD REVIEW CONFERENCE

A. Comments on document TD/RBP/CONF.4/2 on "The role of competition policy in economic reforms in developing and other countries"

United Kingdom

5. "In general, the draft is very balanced and shows much sensitivity to the problems of the developing countries and their need for technical cooperation. We have the following detailed comments:

6. Paragraph 19 contains a methodological discussion on the trade-off between efficiency and consumer welfare. This is an important issue in debate on competition policy. The Office of Fair Trading (OFT) will be publishing a research report on this subject shortly.

7. Paragraphs 44-47 refer to the analysis of vertical restraints. The paper suggests (at para. 47) that it would be useful to have more analysis by UNCTAD of the competition policy treatment of vertical restraints. Should such work be carried out in the future, the secretariat may find useful another research

report to be published shortly by the OFT on vertical restraints, which surveys the latest theoretical developments and which sets out a structure (guidelines) for assessing individual cases.

8. Paragraph 52 refers to regulation by 'price cap'. It may be useful to include into this discussion a statement to the effect that price cap style regulation of the RPI-x type will be less appropriate and more difficult to apply in economies with high interest rates of (RPI) inflation.

9. Paragraph 97 advocates 'common ground' in enforcement of competition law. It is more appropriate to focus on 'common ground' as it exists in the economic analysis methodology in dealing with particular competition issues. This approach is emphasized in paragraph 98."

United States

10. "This is a valuable study. However, it continues to contain broad and vague suggestions in paragraphs 4, 9, 10 and 98 for future work by UNCTAD. (Indeed, it is not at all clear which UNCTAD body would undertake the vast work programme outlined therein.) While many of these proposals may be sound taken individually (e.g. studies of the competition policy of abuses of dominant position (paras. 4 and 98)), given UNCTAD's limited resources, we cannot agree that the IGE (or some other UNCTAD body) should be authorized to undertake all of these studies at this time. In addition, the United States continues strongly to oppose the paper's various formulations of proposals to get the IGE specifically (and UNCTAD generally) involved in trade and competition issues beyond its competence under the Set. Finally, it is quite unclear what is meant by the last sentence of paragraph 7, concerning 'control' of 'investment incentives ... or special protection for foreign investors,' in consultation with competition authorities; that is not a task that many competition authorities currently undertake."

B. Comments on document TD/RBP/CONF.4/6 on "Restrictive business practices that have an effect in more than one country, in particular developing and other countries, with overall conclusions regarding the issues raised by these cases"

Russian Federation

11. "On the whole the study is important and useful and contributes to the achievement of the tasks enumerated in the Set, especially the elimination of RBPs in international transactions.

12. The study contains extensive factual material and interesting conclusions. However, it should be pointed out that the proposals contained in part II of the study, while quite fair, do not follow directly from the material set out in part I, and consequently cannot strictly speaking be termed 'conclusions'.

13. The facts presented in part I provide evidence that at the present stage the Set of Principles and Rules, and also bilateral cooperation, constitute fairly effective means of eliminating RBPs from international transactions.

However, this conclusion should not be viewed as completely objective, since the study analyses only the possibility of the adoption of effective solutions by countries on whose territory so-called RBPs are in effect. The following questions remain open: is a foreign firm's RBP always an RBP in reality, and are countermeasures that are adopted not simply a protectionist defence against foreign competition? It is also necessary to specify whether measures to prevent the strengthening of a dominant market position are the same vis-à-vis domestic and foreign firms. It is obvious that in the absence of an independent body to settle disputes concerning competition, it is difficult to speak of an absolutely fair and transparent system of monitoring RBPs in international transactions.

14. For this reason we consider that the secretariat's research on this issue should be extended and deepened, to serve as a basis for reaching conclusions regarding the desirability of establishing an international system for regulating competition."

United Kingdom

15. "It was agreed at the Conference that future expert meetings should include informal multilateral consultations on competition law and policy issues with a special emphasis on practical cases. We believe that UNCTAD should now concentrate its main efforts on this work and on assisting developing countries in the implementation of competition law and policy rather than attempting to reach a consensus on long analytical policy documents relating to the difficult area of trade and competition.

16. Against this background we consider that further thought needs to be given to the value of continuing work on TD/RBP/CONF.4/5, 4/6, 4/8 and UNCTAD/ITD/15 in their current form. I have however made a number of broad remarks, which will apply to more than one draft paper, as they concern general policy principles. I have also included some detailed comments on some of the papers.

General comments on papers TD/RBP/CONF.4/5, 4/6, 4/8

Proposals for developing binding competition rules

17. The papers make a number of references to the need for the application of competition rules on the international level and possible convergence of national competition policies.

18. Any consideration of binding multilateral rules should take into account evidence of the need for such rules as well as the risks and benefits of such rules.

19. Cooperation and convergence should be seen as complementing each other, rather than as alternatives. The OECD has made significant progress in identifying areas of difference and areas of common principles which can help members move their laws and policies towards common patterns. However, it is important to consider whether any currently perceived problems are caused by

divergence in various countries' competition laws or whether in fact they are caused by the failure of one country to apply its legislation consistently, or by the adoption of regulations in particular market sectors which have anticompetitive effects.

20. One should not underestimate the difficulties involved in the process of legislative or procedural change. For example, serious consideration needs to be given to the issue of information disclosure for the purposes of assessing competition issues and how such disclosure may conflict with the need to protect important national interests. Equally important is the need to ensure that confidential information and business secrets are treated with appropriate respect.

Use of the term 'hard-core' and whether a consensus is emerging for the prohibition of hard-core arrangements

21. Hard-core arrangements normally refers to arrangements which have no redeeming features. Use of the term begs the question as to whether a particular arrangement does or does not have redeeming features.

22. We understand that the United States law treats price fixing and market allocation as per se objectionable but we believe that this does not mean that they treat such agreements as never having any redeeming features. Rather, we understand that they consider that such arrangements normally do not have such features and so a full case-by-case market analysis is only required if it can be shown that some redeeming features are present. The EC permits exemption for arrangements if there are benefits to consumers or to Community interests.

23. There therefore does not appear to be a consensus that all price fixing or market sharing arrangements should be prohibited without the possibility of exemption or case-by-case analysis.

Lifting of government barriers likely to be followed by private restraints

24. It is suggested that as government barriers to trade are removed under the Uruguay Round they are likely to be replaced by private restraints. Government barriers to trade frequently act as barriers to entry to the relevant market for competition. Hence as government barriers are removed, any private restraints seem likely to be less not more easy to sustain.

Private restraints are currently acting as significant barriers to trade

25. It is suggested that private restraints are currently acting as a significant barrier to international trade. No doubt in certain areas private restraints do restrict trade but we are not aware of evidence that this is a significant problem. We believe that in general, government regulations such as statutory monopolies, standards and restrictive trade measures are the main sources of restrictions on trade access. To the extent that private restraints do not act as a barrier to trade they may be sustainable only because of government regulation.

26. Specific moves to abolish State monopolies are referred to in TD/RBP/CONF.4/8 in paragraph 28. This is a fairly innovative development and one which is increasingly being taken up by more and more countries. It is a trend which relates to the review of the Set, so more could be made of it in future studies.

Effect of foreign direct investment

27. There appears to be a presumption at many points in the papers that foreign direct investment is likely to lead to the creation of a monopoly situation. In general, foreign investment will create alternative sources of supply and hence seems likely to promote and not to restrict competition.

EC law and effects doctrine

28. It is argued that there is little difference between EC and United States jurisprudence in relation to the effects doctrine. In Ahlstron v Commission, the European Court of Justice overturned a decision by the European Commission and accepted that there was jurisdiction only because the agreement in question was implemented in the Community. The Court's judgement therefore distinguishes 'implementation' in the Community from the 'effects' doctrine as espoused by the United States law. It is only under the United States interpretation of the 'effects' doctrine that agreements which produce some substantial effect in the United States without being implemented there such as those cited in the Hartford Fire Insurance case are regarded as falling within United States jurisdiction. The exercise of extraterritorial jurisdiction by the United States in this case was challenged by the United Kingdom and we would ask that you insert this statement into the text.

Extraterritorial jurisdiction

29. The improper assertion by a State of jurisdiction over non-nationals in respect of events occurring wholly outside the sovereign territory of the State is an important issue for the United Kingdom. We are particularly concerned in this respect about any use by countries of their competition policy to promote their trade interests. It is not clear that the action taken in the Pilkington case could be judged to have a pro-competitive effect from the point of view of domestic markets outside the United States or that the arrangements which Pilkington agreed with its sub-licences considerably restrained competition in those markets."

United States

30. "This document contains much useful information and many useful insights. But it also contains some factual inaccuracies about United States law and some observations with which we do not agree. First, the discussion of the Hartford Fire case in paragraph 5 (b) states that our Supreme Court ruled that 'abstention from exercising ... jurisdiction for comity considerations was to be contemplated only if there was a true conflict between United States and foreign law;' a similar statement appears on page 17. As our 1995 International Guidelines state (at p. 21), the Court did not make such a decision; rather, it ruled only that as to one comity factor, conflict with

foreign law, 'no conflict exists ... if the person subject to regulation by two States can comply with the laws of both'. Second, the discussion of the ZF/Allison case in paragraph 11 (b) states that the German Federal Cartel Office issued a formal prohibition order before the United States Justice Department took action. That is true, but it is also true that the Department ultimately challenged the transaction in court - while the Cartel Office's order was on appeal in Germany - and that the firms then called off the transaction.

31. Third, on page 15 the note states that '[t]here is as yet no consensus as to what a comprehensive, optimal competition law should look like'. This statement certainly supports the secretariat's recent view that the Model Law or Laws should remain a work in progress.

32. Fourth, page 15 also suggests considering a 'modest initiative for a binding international agreement to outlaw hard core horizontal restraints'. For the reasons suggested in the previous paragraph on page 15 - among others - the United States cannot agree with this suggestion. Nor can we agree with the suggestion on page 16 that countries should repeal statutory export cartel exemptions; as the United States has stated on prior occasions, export cartel exemptions obviously do not apply in foreign countries, which are free to enforce their competition laws against such cartels.

33. Finally, consistent with our traditional position, the United States would oppose the amendments to the Set contemplated in the last sentence of the text on page 19."

C. Comments on document TD/RBP/CONF.4/7 on "Feasibility study of developing a bibliography and database on RBPs"

Russian Federation

34. "The document is a rather thorough and comprehensive study of the possibility of developing a database on RBPs, which would undoubtedly facilitate the efforts of participating countries in eliminating the negative features of RBPs. While we broadly support the proposal for the establishment of such a database, we consider that a number of practical suggestions are called for.

35. With a view to the more rational use of resources, we regard as undesirable the development of a database on legislation. We suggest confining efforts to a bibliographical database and one on decisions, as agreed at the fourteenth session of the IGE on RBPs. We suggest that information on current antimonopoly legislation should be built up in printed form through the publication of special reference guides based on information received from member countries.

36. In view of the limited resources available, it would be advisable to maintain only a database on decisions relating to international transactions drawing on information submitted by each country which has adopted a decision in this area. The original language should be used for the bibliography and the decisions.

37. As the bibliographical archive will presumably also include material containing economic analysis, we suggest that the name of the system should be changed to 'UNCTAD Multinational Information System Relating to Competition', with corresponding changes in paragraphs II.6, II.9 and elsewhere in the text. It is not completely clear what criteria underlie the proposal that the bibliographical database should be a selective one. In our view, the database should be comprehensive in nature.

38. The database should be universal and contain all information of interest, i.e. not only the texts of documents but also, for example, information on countries where similar norms have been adopted, where enforcement practices are similar, and so on. The database should be continuously updated.

39. In view of the interest of many countries in the creation of a comprehensive information system on competition, it will be possible to expand this database in the future by adding a section on legislation, and also to use the database as a starting-point for the establishment of a computer network for easy handling of the required information.

40. In this regard, we consider that it is necessary to address the question of technical assistance for connecting all the users to the Internet system."

United Kingdom

41. "At the Third Review Conference, the United Kingdom stated that it could not support this project in its present form. We previously expressed, both orally and in writing, a number of serious concerns about the proposed database. These included doubts about the extent to which the database would be used, the likely extent of its coverage, the ability of the database to be funded out of existing budgets and its maintenance to be self-funded, the means of distribution, language as a barrier to use and copyright ownership of the materials which it is proposed should be included in the database.

42. In addition to these concerns, it has been the United Kingdom's experience, in our assistance to countries setting up their competition policy, that a danger exists that reference to precedents can be used to set policy, upon the basis that as another country had found a particular practice in a certain industry anticompetitive, the same would apply elsewhere. Unless the content of the database concentrates on principles and techniques of investigation rather than decisions, at the best, it will not be used and at the worst, it is likely to produce more harm than good."

United States

43. "The proposals for creating a database vastly exceed UNCTAD's resources and (at least as to the United States) would merely duplicate much of the vast amount of public information on competition law matters."

D. Comments received on document TD/B/RBP/81/Rev.4 "Draft commentaries to possible elements for articles of a model law or laws"

Japan

44. Paragraph 74 should read: "In Japan, for example, Old Parr Co. (the sole Japanese agency for Old Parr Whisky) instructed its agents not to supply whisky to dealers who imported Old Parr whisky from other sources, or who sold the products supplied by Old Parr Co. at less than the Company's standard price. It devised a special checking mark for packaging supplied by its agents in order to detect any dealer not complying with its requirements. The Japanese Fair Trade Commission investigated the case and found that such action constituted an unfair business practice and accordingly ordered Old Parr to discontinue its practice. 112/"

45. Paragraph 136, third sentence, should read: "In countries such as Brazil, Germany, Hungary, Japan, Lithuania, Mexico, Norway, Pakistan and the Russian Federation, and in the EC, the administrative bodies have powers to impose fines or administrative surcharges." The reason is that in Japan, the Fair Trade Commission, an administrative organization, has no authority to impose criminal "fines". It has authority to impose administrative surcharges. This represents not a penalty but collection of extra profits.

46. Paragraph 139, last two sentences, should read: "In Japan, the administrative surcharge was introduced in 1977. Under this legislation, an administrative surcharge of US$ 80 million was imposed by the Japanese Fair Trade Commission on a cement cartel in 1991. The rate of the administrative surcharge was raised to 6 per cent (in principle) of the total sales of a participant of a cartel during the period in which the cartel was effectively enforced, also in 1991."

47. Footnote 169 should read:

169/ "Competition Policy in OECD Countries 1991-1992" (p. 239).

because it is more appropriate to cite an official source such as "Competition Policy in OECD Countries 1991-1992" (p. 239, attached) than citing BNA.

United Kingdom

48. This study is almost concluded. The United Kingdom has commented extensively on it in the past; we are pleased with its high quality and expect it to be a useful document. We have the following minor drafting suggestions:

Page 6 - Definitions

I (b) The definition of a dominant position of market power when applied collectively should not be limited to "a few other enterprises". For example, trade associations can have many enterprises.

I (c) The United Kingdom's position on the definition of the relevant market is that this should include supply-side substitution where this is practical (this is picked up in para. 12, p. 16).

Page 8 - II. Acts or behaviour considered as abusive - (a)

49. In the United Kingdom's approach to predatory behaviour, we are not convinced that predatory behaviour is capable of being an abuse without a definition of what such behaviour is. In particular, the theoretic work we have carried out indicates that "below cost pricing" is not the standard upon which to assess predation. (OFT research report on predation refers.)

Page 8 - II (b)

50. In the United Kingdom, price discrimination can in some circumstances be regarded as a manifestation of competition and in other circumstances as anticompetitive. However, the distinction is far from obvious.

Page 8/9 - Mergers

51. It seems very difficult in administrative terms to propose purely "effects" - based merger legislation.

United States

52. On the apparently generally accepted theory that the commentaries on the Model Law are a work in progress, I have no further comments on this draft at this time. The secretariat seems to have taken into account our comments on the last draft, which I conveyed in my letter to you dated 30 November 1994.

E. Comments received on document UNCTAD/ITD/15 on "The basic objectives and main provisions of competition laws and policies"

United States

53. As stated at the Review Conference, this study covers many concepts, and does so very well. It deserves to be discussed in more detail at the next IGE meeting.

II. DRAFT OUTLINE OF A POSSIBLE STUDY ON EMPIRICAL EVIDENCE OF THE BENEFITS (INCLUDING BENEFITS FOR CONSUMERS) TO BE GAINED BY DEVELOPING COUNTRIES AND LEAST DEVELOPED COUNTRIES AND COUNTRIES IN TRANSITION FROM APPLYING COMPETITION LAW AND POLICY PRINCIPLES TO ECONOMIC DEVELOPMENT IN ORDER TO ATTAIN GREATER EFFICIENCY IN INTERNATIONAL TRADE AND DEVELOPMENT

54. It is proposed that the study should mainly focus upon the beneficial effects of competition policy for allocative, static and dynamic efficiency, and for consumer welfare. Little attempt would be made to go into other socio-economic effects that competition policy may also have (and which competition policy in different countries may also aim at), except for some discussion of the concepts of competitiveness and of total welfare (which covers both consumer and producer welfare).

55. In the first part of the study, the advantages of competitive markets, in comparison with monopolistic or oligopolistic markets, would be described, and available empirical evidence discussed, in terms of each of the following: efficient and flexible prices and resource allocation; encouragement of market entry; a greater variety of cheaper and/or better quality goods and services for consumers (though price flexibility may sometimes lead to higher prices, at least in the short term); cheaper and better-quality intermediate inputs for user industries, resulting in their greater competitiveness; the positive role of interfirm rivalry as an incentive towards greater efficiency; encouragement for research and development and the creation of new production processes and new products; and the role of competition in determining the success of industries and firms involved in international trade. The extent to which there may be exceptions to the above-mentioned advantages of competition, such as the encouragement of technological innovation by market concentration, large firm size or intellectual property protection, would be covered in this context, and it would be assessed whether these really constitute exceptions to the benefits of competition. For the purposes of this part, the study would rely upon available quantitative and qualitative evidence relating to the effects of reduced competition and/or market concentration on the one hand, and market contestability on the other, upon economic performance in several developed and developing countries. Examples might be taken, for example, from the West African shipping market, and from a few economic sectors in the Republic of Korea, or from studies on the Dutch or Swiss economies.

56. The second part of the study would focus on the benefits to be obtained from the adoption of an explicit competition policy, relying upon data from actual cases or experiences in member countries (such as the ATT case, the deregulation of the airline industry in Australia or the United States, or the deregulation of utilities or local bus transport in the United Kingdom), as well as studies on market structure and performance in such countries as Malaysia, the Republic of Korea and the United Kingdom. Distinctions would be made where appropriate as to the effects of competition policy in sectors already exposed to competition from imports and those not so exposed, in competitive markets and markets with some natural monopoly characteristics, and in markets which are fully liberalized and those which are subject to some regulatory restrictions. The study would also describe cases indicating where it appears that inappropriate enforcement action by competition authorities may have been detrimental to efficiency and consumer welfare.

57. The study would note the difficulties involved in isolating the effects of competition policy from other government policies (such as privatization) or from economic or technological changes in the industry examined, as well as the paucity of data relating to ex post facto monitoring exercises relating to the effects of enforcement action against RBPs. The study would call for more data or case studies from developing and developed countries relating to the effects of the application of competition law and policy. Such data might include, for example:

(1) A description of the structure, conduct and performance characteristics of the market affected by anticompetitive practices (number and characteristics of domestic suppliers, intensity of competition from foreign producers, etc.);

(2) Modalities of intervention used by the competition agency to deal with the case (through enforcement proceedings or through a competition advocacy role);

(3) Short-term and (where applicable) medium- to long-term effects of the competition policy intervention with regard to consumer welfare or firm or industry performance.

III. PROGRESS REPORT ON A REVIEW OF TECHNICAL COOPERATION ACTIVITIES

A. Technical cooperation provided by UNCTAD since the Third Review Conference (November 1995)

58. It should be noted that the main types of requests for technical assistance received by UNCTAD are as follows:

(a) States without any competition legislation may request information about restrictive business practices, their existence and possible adverse effects on their economy. This may involve a study of the restrictive business practices in their economy;

(b) States without competition legislation may request introductory seminars directed at an audience including government officials and academics, as well as business and consumer-oriented circles;

(c) States which are in the process of drafting competition legislation may request information on such legislation in other countries, and seek advice as to drafting their competition legislation;

(d) States which have just adopted competition legislation may seek advisory services for the setting-up of the competition authority; this usually includes training of officials responsible for the actual control of RBPs, and may involve training workshops and/or on-the-job training with competition authorities in countries having experience in the field of competition;

(e) States which have already adopted such legislation and have experience in the control of RBPs may wish to consult each other on specific cases and exchange information; seminars may be organized for such exchanges between competition authorities;

(f) States which wish to revise their competition legislation might seek expert advice from competition authorities in other States, so as to amend their laws in the most effective manner possible.

59. Accordingly, since the Third Review Conference, which took place on 13-21 November 1995, the UNCTAD secretariat has undertaken the following technical cooperation activities:

December 1995

- Organization of a national Competition Seminar in Lusaka (Zambia), at which experts from Kenya, South Africa and the United Kingdom exchanged views with the Zambian Authorities on the recently adopted Zambian Competition Act in view of the establishment of a Competition Authority;

- Seminar on "Enforcement of National Law on Competition and Restrictive Business Practices", organized by the German Foundation for International Development (DSE), in cooperation with UNCTAD, the German Federal Cartel Office and the Monopoly Control Authority of Pakistan;

- Participation in the First National Seminar on Competition Policy for the Republic of Paraguay;

- Advisory services for the preparation of the draft competition law of Paraguay;

- Advisory services related to the preparation of the draft competition law of Bolivia;

- Commentary on the draft competition law of Panama (the law was adopted shortly thereafter).

January 1996

- Further advisory services to Bolivia on the draft competition law, as well as draft law on consumer protection and unfair competition.

March 1996

- Preliminary discussions with the Government of Guatemala about the need for drafting competition legislation;

- Discussions with the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA) about the need for a technical cooperation project on competition for the Central American countries members of SIECA.

April 1996

- Advisory services on draft Competition Law of Guatemala;

- Further advisory services provided to Bolivia on revised draft of Competition law, consumer protection law, and law on the repression of unfair competition.

May 1996

- Advisory services to Colombia on the drafting of regulations for implementing the Act on Free Competition;

- Advisory services to the Government of Peru concerning the setting-up of regulatory authorities for privatized sectors;

- Participation in the VIth Session of the Interstate Council for Antimonopoly Policy of the Commonwealth of Independent States (CIS) in Almaty (Kazakstan);

- Visit to the Commission for the Promotion of Competition of Bulgaria.

June 1996

- Organization and participation in a Symposium on Competition Policy and Legislation for the Government of Malawi, with the participation of an expert from South Africa;

- Seminar on Competition Policy and advisory services for the Government of Honduras;

- Seminar on Competition Policy organized by the German Foundation for International Development (DSE) in cooperation with UNCTAD, on an exchange of experiences between the German Federal Cartel Office and the newly set-up Competition Authority of the Republic of Costa Rica;

- Seminar on Restrictive Business Practices organized by UNCTAD in Havana (Cuba) with the participation of competition experts from Chile and Venezuela.

July 1996

- Commentary on the draft legislation for the reform of the Antimonopoly Act of Chile.

August 1996

- Advisory services to the Government of Colombia on regulations for implementation of the Competition Act;

- Advisory services to the Government of Guatemala on the draft Competition Law;

- Commentary on the draft Competition Law and consumer protection law of Paraguay;

- Participation in the Conference on Competition Policies and Economic Reforms organized by the Peruvian Competition Authority (INDECOPI) in Lima (Peru);

- Presentation of the work of UNCTAD to the second meeting of the Working Group on Competition Policy of the Free Trade Area of the America (ALCA) in Lima (Peru);

- Advisory services to the Government of the Dominican Republic on the preparation of a draft competition law and consumer protection law.

September 1996

- Advisory services to the Government of Honduras on draft competition legislation and technical assistance project;

- Participation in international seminar on competition policy organized by the Fair Trade Commission of the Republic of Korea in Seoul (Republic of Korea).

B. Technical cooperation undertaken by other international organizations, as well as States bilaterally

60. Below are extracts of the replies received so far to note TD/420/8(5)Q of 8 March 1996 of the Secretary-General of UNCTAD requesting information in this area.

Bulgaria

Section I

61. The Commission for Protection of Competition (CPC) of the Republic of Bulgaria was established on the basis of the Law on Protection of Competition (LPC) passed by the Great National Assembly in May 1991. It is an independent body financed by the State budget and consists of a Chairman, two Deputy-Chairmen and eight members who are elected and discharged by the National Assembly. Pursuant to the LPC and in compliance with the functional organization pattern of the CPC, a working body at the CPC was established by a decision of the Council of Ministers. This working body has the task of supporting the work of the CPC, assisting in the expedient implementation of its decisions, and securing administrative-economic support for it.

62. In fact the CPC started its activities at the end of October 1991. Although it was a relatively new authority, it succeeded in establishing very good contacts with the respective units and bodies of some big international organizations, such as UNCTAD, OECD, EU and EFTA, as well as with authorities of different countries, both industrially developed, such as the United States of America, Germany, France and Japan, and countries in transition, such as Russia, the Czech Republic, Slovakia, Hungary, Poland, Romania, Kazakstan, Ukraine, Belarus, etc. Representatives of the CPC managing body regularly participate in the work of the Intergovernmental Union for Antimonopoly Policy of the CIS countries.

63. Concerning the technical assistance provided or intended to be provided by the CPC for the period 1995-1997, it has to be taken into account that no direct technical assistance in terms of financial support has been provided, nor does it seem likely to be provided in the near future, because of the limited budget of the CPC and the financial and other material difficulties that the Commission itself is facing.

64. However, in the form of technical assistance, especially mutual exchanges with the Central and East European countries and CIS, the CPC has built up very useful and mutually beneficial relations which allow not only for the exchange of practical experience but also for the exchange of views and for discussions on legal regulations and supplementary regulations in the field of competition policy and legislation. A substantial role in this aspect was played by:

- The Agreement signed by the Governments of Bulgaria and the Russian Federation for cooperation in the field of antimonopoly policy;

- The Agreement between the Commission for Protection of Competition of the Republic of Bulgaria and the Ministry of Economic Competition of the Czech Republic for cooperation in the field of economic competition;

- The bilateral Agreements and Memoranda for cooperation in the field of competition protection signed by the CPC and the respective authorities of Hungary, Slovakia, Romania, Ukraine and Moldova.

65. The Management of the Commission for Protection of Competition of the Republic of Bulgaria has always declared that, in spite of its moderate practical experience, the CPC has highly qualified specialists and will readily, as required, provide counselling according to its competencies in the field of:

- Drawing-up of legal regulations and supplementary regulations related to competition;

- Development of methodological guidebooks, analyses and methodologies required for tackling various problems related to competition policy and practice.

Czech Republic

66. In May 1996, the Ministry of Economic Competition of the Czech Republic (MEC), in conjunction with the European Commission, organized the Competition Policy Conference in Brno, Czech Republic. The participating countries were countries that have already signed their Association Agreements with the European Union - the Czech Republic, the Slovak Republic, Poland, Hungary, Romania, Bulgaria, Estonia, Latvia, Lithuania and Slovenia. The Conference discussed both competition and state aid issues and focused especially on the transition period exigencies in the area of competition law.

67. The Department of Justice of the United States (DOJ) and the Federal Trade Commission (FTC) organized two practical seminars for the staff at MEC: in October 1995 - Investigative Practices Seminar (abuse of dominance) and in March 1996 - Cartel Detection Seminar.

68. A Seminar on European Competition Law organized by the Trier Academy of European Law took place in September 1995 in Brno.

69. The German Foundation for International Legal Cooperation organized for the staff at MEC a Seminar on Media Concentration in December 1995, with a follow-up seminar in 1996.

70. The European Commission (DG IV) organized collective training for antimonopoly officials from Central and Eastern Europe in Brussels in September/October 1995. The programme consisted of two-weeks' training at DG IV, followed by two weeks placement at antimonopoly offices in various member countries of the European Union.

Germany

71. The Federal Cartel Office's (FCO) technical cooperation activities consist mainly of advice and information provided both in house and in the countries concerned. These activities are largely financed by outside funds made available, inter alia, by private associations and foundations.

72. Delegations seeking information, etc., on German competition law, the structure and function of the FCO and privatization issues came from the following countries (excluding the EU and the United States of America):

1995-May 1996	No. of visitors	
Ukraine	20	
Korea	4	
Belarus	1	
Japan	4	
China	11	
China	13	
Slovak Republic	2	for 1 week
Malaysia	3	
China	15	
Brazil	6	
Czech Republic	1	for 2 weeks
Bulgaria	2	for 2 weeks
Lithuania	1	for 2 weeks
Viet Nam	4	
China	20	
Japan	4	
Russia	25	
Ukraine	28	
China	20	
Japan	3	
Argentina, Paraguay, Chile	20	
Bulgaria	2	for 2 weeks
Hungary	10	
Republic of Korea	3	

73. Delegations from the following countries have - so far - been scheduled to visit the FCO in the period June 1996-1997:

El Salvador	9 visitors
China	20 visitors
Russia	For 1 week
Paraguay	
Finland	For 2 months

74. Since 1995 a member of the Federal Trade Commission of Korea has been with the FCO for further training (until the end of 1996).

75. Members of the FCO have rendered technical cooperation services in the following countries:

1995-May 1996

Bolivia	4-day Seminar on Improved Enforcement of National Competition Laws in Bolivia
Pakistan	1-week Seminar on Enforcement of National Laws on Competition and Restrictive Business Practices
Ukraine	5-day Competition Law Conference
Viet Nam	1-week Seminar on German Competition System
Hungary	2-week seminar
Kazakstan	2-day seminar on introducing a competition system
Peru	1-week stay to give advice on competition law enforcement

76. Visits by the FCO in 1996 are scheduled for: Costa Rica, Sri Lanka, Bulgaria, Brazil; visits in 1997 are scheduled for: Papua New Guinea, Mongolia, Bulgaria.

Mexico

77. Technical cooperation on competition law and policy provided to other States at the bilateral or multilateral levels during the 1995-1997 period was as follows:

(a) Cooperation:

- In the framework of technical cooperation between Mexico and Nicaragua, a staff member of the Federal Commission on Competition (Mexico's Competition Authority) visited Managua on 28-29 March 1996 to advise the Government in the field of competition law and policy;

- Two staff members of the Technical Unit of the Commission to Promote Competition of Costa Rica visited Mexico City on 29 April-6 May 1996 for training in the area of competition law and policy.

(b) Assistance or requests for assistance by Mexico in the area of competition law and policy:

- During the last two years, staff members of the Federal Commission on Competition received training in the area of competition law and policy in Canada, the United States, Spain and the OECD;

- Irrespective of the interest indicated by the Federal Commission on Competition to receive technical assistance from other countries, there is at present no specific request pending in this area.

Pakistan

Technical cooperation on competition law and policy

78. A three-day seminar on the Enforcement of National Laws on Competition and Restrictive Business Practices was held on 4-6 December 1995 in Islamabad. It was organized jointly with the German Federal Cartel Office, UNCTAD, and the German Foundation for International Development. In this seminar, national laws of Germany and Pakistan were discussed in detail.

79. Participants included officials of the Federal Cartel Office of Germany, officers of the Monopoly Control Authority, representatives of other government departments and private organizations, and representatives of UNCTAD and the German Foundation. Participants were of the view that the experience gained will help them greatly in implementation of the respective laws. UNCTAD is requested to hold such seminars in future also. The seminar was funded by the German Foundation for International Development and the Monopoly Control Authority, Government of Pakistan, Islamabad.

Sweden

80. From 1994 to July 1996, the Swedish Competition Authority received study visits from the authorities of a number of countries including Hungary, Slovakia, the Baltic States, Poland, Slovenia, Russia and China. The purpose of these visits was to give technical assistance on legislation, institutional framework and enforcement issues. The duration of the visits varied from half a day up to two weeks.

United States

81. During 1995 and 1996, the United States federal antitrust agencies (the Department of Justice and the Federal Trade Commission) thus far have: (1) provided long-term advisors to the Latvian, Lithuanian, Polish, and Romanian competition agencies, respectively; (2) sent one or more short-term technical cooperation missions to Albania, the Czech Republic, Hungary,

Jamaica, Latvia, Lithuania, Moldova, Poland, Romania, the Russian Federation, Slovakia, Slovenia, Ukraine, and Venezuela, respectively; (3) hosted as interns competition officials from Albania, Hungary, Lithuania, Poland, Romania, and Venezuela, respectively; (4) hosted two conferences in Vienna for competition officials from 11 Central and Eastern European countries; and (5) participated in OECD competition seminars in Istanbul, Paris, St. Petersburg, and Vienna. Nearly all the expenses of these technical cooperation activities were funded by the United States Agency for International Development.

Notes

1/ Resolution contained in annex I to the Report of the Conference (TD/RBP/CONF.4/15).

2/ Midrand Declaration and a Partnership for Growth and Development (TD/377), para. 91 (iii).